

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE**

In re application of James T. Doubet

May 11, 2009

Serial Nbr: 10/668,533

Filed: September 23, 2003

For: **ENABLING COUNTRY OF ORIGIN LABELING AND VERIFICATION  
FOR LIVESTOCK PRODUCTS**

Art Unit: 3687

Examiner: Oluseye Iwarere

**APPELLANT'S BRIEF ON APPEAL**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is an Appeal seeking reversal of the decision of the Primary Examiner, finally  
rejecting all current claims of the subject patent application.

**1) REAL PARTY IN INTEREST**

The real party in interest is the Appellant, James T. Doubet.

**2) RELATED APPEALS AND INTERFERENCES**

Appellant and the Appellant's legal representative have no personal knowledge of any other appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**3) STATUS OF CLAIMS**

Claims 1 - 19 and 21 stand rejected. Claim 20 was previously cancelled from the application without prejudice. The rejection of Claims 1 - 19 and 21 is appealed herein.

**4) STATUS OF AMENDMENTS**

A Final Rejection was mailed on January 9, 2009. An Amendment After Final has not been filed responsive to this Final Rejection.

**5) SUMMARY OF CLAIMED SUBJECT MATTER**

1. In a first aspect as claimed in independent Claim 1, Appellant claims a method of tracking animal transfers with animal passports (Claim 1, line 1; Abstract, sentences 2 and 3; Specification, p. 8, lines 9 - 15). An animal passport is created to represent a transfer of animals (Claim 1, lines 2 - 3; Specification, p. 6, lines 15 - 18; **Fig. 2**, reference number **200**). Notably, "animals" is used in the plural while "transfer" is used in the singular, indicating that the passport represents a

transfer of multiple animals (Specification, p. 6, lines 16 - 18 and p. 9, lines 10 - 12). A unique passport identifier is assigned to the passport, thereby providing a unique identification of the transfer (Claim 1, lines 4 - 5; Specification, p. 6, lines 16 - 18 and p. 8, lines 15 - 17; **Fig. 2**, reference number **205**). The creating and assigning are repeated for each of at least one subsequent transfer of one or more of the animals, and the animal passport created for each subsequent transfer also records the unique passport identifier assigned to each most-recent previous transfers of those animals (Claim 1, lines 6 - 9; Specification, p. 6, lines 18 - 24; **Fig. 3A**, reference number **371**).

2. For example, **Fig. 2** illustrates a passport **200** created to represent a transfer of 100 cattle (see **210**, where the number of animals is specified). A unique passport number of “03000001” is assigned to passport **200** (see **205**, where the unique passport number is specified). **Fig. 3A** illustrates an animal passport **300** created for a subsequent transfer of 40 of these same cattle (see **310**), and a unique passport number “04004321” **305** is assigned to this passport **300**. Passport **300** also records the unique passport number “03000001” (see **370**, **371**) assigned to the most-recent previous transfer of these 40 cattle. In this example, passport **300** of **Fig. 3** is therefore referring back to passport **200** of **Fig. 2** by recording the “unique passport identifier” at **371** which was assigned to the “most-recent previous transfer” of the cattle. As further recited in various dependent claims (discussed below), the unique passport numbers assigned to each animal passport can be used to construct a sequence (or “chain”) of animal passports, and since each passport represents one transfer (see, generally, **210 - 216** of **Fig. 2**), the sequence/chain of passports can therefore be used to determine all of the transfers of the animals represented by

those passports.

3. Claims 2 - 15 are dependent claims that depend from Claim 1. Claim 2 recites that each animal passport is signed by a transferor and transferee, thereby certifying the transfer which is represented by the animal passport (Specification, p. 13, lines 8 - 14 and p. 21, lines 21 - 24; **Fig. 2**, reference numbers **220 - 230** and **240 - 250**). Claim 3 recites recording the animal passports in a repository that is maintained by a distinct third party (Specification, p. 9, lines 20 - 21, stating that the third party is “independent”; p. 10, lines 3 - 4; and p. 24, lines 17 - 19). Claim 4 recites using the animal passport identifiers to track locations of the animals (Specification, p. 13, lines 4 - 6 and p. 22, line 13 - p. 23, line 14; see **Fig. 2**, reference number **214**, identifying a location of the animals at the time of transfer).

4. Claim 5 recites that the animal passports reflect a complete lifetime of the animals, and are therefore usable to track transfers of the animals throughout their lifetime (Abstract, penultimate sentence; Specification, p. 6, lines 21 - 24 and p. 8, lines 15 - 21; see also p. 17, line 16 - p. 18, line 6, discussing an example with reference to **Fig. 1**, which shows a “complete lifetime” view of sample transfers). Claim 6 is similar, but recites that the passports are usable to track locations instead of transfers (Specification, p. 13, lines 4 - 6; p. 22, line 13 - p. 23, line 14; and p. 37, lines 1 - 4; **Fig. 2**, reference number **214**).

5. Claim 7 recites that the transfers are transfers of ownership (Specification, p. 12, lines 5 - 6), while Claim 8 recites that the transfers are transfers of possession (Specification, p. 12, lines 7

- 9 and p. 24, lines 2 - 5). Claim 9 recites that at least one transfer is a transfer of ownership, and at least one is a transfer of possession (Specification, p. 12, lines 5 - 9 and p. 24, lines 2 - 5).

6. Claim 10 recites that the creating and assigning of Claim 1 are repeated for subsequent transfers of animal products derived from the animals (Specification, p. 18, line 20 - p. 19, line 2). An example of such animal products is meat (Specification, p. 18, lines 20 - 21).

7. Claim 11 recites that the animal passports further specify individual animal identifications (Specification, p. 12, line 22 - p. 13, line 4; **Fig. 2**, reference number **212**) – that is, in addition to having a unique identifier for a transfer of animals as recited in Claim 1, identifications of the individual animals are also specified according to Claim 11.

8. Claim 12 recites that additional animals are included in one or more of the subsequent transfers (i.e., the subsequent transfers referenced in the “repeating the creating and assigning ...” recited on lines 6 - 9 of Claim 1), and the animal passport created for such subsequent transfers also records the unique passport identifier of each most-recent previous transfer of those additional animals (Specification, p. 11, line 20 - p. 12, line 3 and p. 17, lines 4 - 5; see also Specification, p. 16, lines 19 - 24, referring to the scenario illustrated by passport **380** of **Fig. 3B**, where 27 cattle are recorded therein as joining together in a transfer with the 60 cattle previously transferred under passport **300** of **Fig. 3A**, thus necessitating 2 different passport numbers of “most-recent previous” transfers at **391, 392**).

9. Claim 13 recites that animal passports are created for each transfer during a lifetime of the animals (Claim 13, lines 1 - 2; Specification, p. 6, lines 15 - 24 and p. 8, lines 9 - 21; Abstract, penultimate sentence). Claim 13 also recites that each animal passport is recorded in a third-party repository (Specification, p. 9, lines 20 - 21; p. 10, lines 3 - 4; and p. 24, lines 17 - 19), and specifies how many animals are represented by each transfer; a location of the animals during a timeframe covered by the animal passport; and an identification of transferor(s) and transferee(s) of each transfer (Claim 13, lines 3 - 7; Specification, p. 12, line 20 - p. 13, line 6; p. 29, line 22 - p. 30, line 19; and p. 31, lines 19 - 22; see also reference numbers **210, 214, 230, 250** of **Fig. 2** and **700** of **Fig. 7**). Claim 13 further recites that a country of origin is determined for selected ones of the animals using each unique passport identifier associated therewith to determine all of the locations in which the selected animals have been located throughout their lifetime (Claim 13, lines 9 - 11; Specification, p. 25, lines 18 - 21; p. 26, line 23 - p. 27, line 2; p. 34, lines 4 - 13; and p. 37, lines 1 - 3; see also reference number **640** of **Fig. 6** and corresponding text on p. 29, lines 13 - 19). For example, it may be determined whether the country of origin for a selected animal can be claimed as “U. S. only” (or perhaps as “United States”).

10. Claim 14 recites that each animal passport specifies how many animals were transferred in the transfer represented by that animal passport; a location of the animals during a timeframe covered by the animal passport; and an identification of transferor(s) and transferee(s) of that transfer (Claim 14, lines 2 - 5; Specification, p. 12, line 20 - p. 13, line 6; see also reference numbers **210, 214, 230, 250** of **Fig. 2**). Claim 14 further recites determining, for a selected one of the animals, all locations in which that animal has been located throughout its lifetime, using each

animal passport associated with that animal (Claim 14, lines 7 - 9; Specification, p. 22, line 13 - p. 23, line 14; see also reference number **214** of **Fig. 2**). Claim 14 also recites preparing a country of origin claim for the selected animal, using the determined locations, where this country of origin claim indicates whether the selected animal has been located only in a selected country throughout its lifetime (Claim 14 lines 10 - 12; Specification, p. 25, lines 18 - 21; p. 26, line 23 - p. 27, line 2; p. 29, lines 13 - 19; and p. 34, lines 4 - 13; see also reference number **640** of **Fig. 6**).

11. Claim 15 recites that animal passports are created for each transfer during a lifetime of the animals (Claim 15, lines 1 - 2; Specification, p. 6, lines 15 - 24 and p. 8, lines 9 - 21; Abstract, penultimate sentence). Claim 15 also recites that each animal passport is recorded in a repository (Claim 15, line 3; Specification, p. 6, line 24 - p. 7, line 1) and specifies how many animals are represented by each transfer; a location of the animals during a timeframe covered by the animal passport; and an identification of transferor(s) and transferee(s) of each transfer (Claim 15, lines 3 - 6; Specification, p. 12, line 20 - p. 13, line 6; p. 29, line 22 - p. 30, line 19; and p. 31, lines 19 - 22; see also reference numbers **210**, **214**, **230**, **250** of **Fig. 2** and **700** of **Fig. 7**). Claim 15 further recites constructing a chain of transfers for a selected one of the animals using each most-recent previous unique passport identifier recorded on animal passports associated with the animal, thereby determining all of the locations in which the selected animal has been located throughout its lifetime (Claim 15, lines 7 - 10; Specification, p. 25, lines 18 - 21; p. 26, lines 1 - 5; p. 26, line 23 - p. 27, line 2; p. 28, line 22 - p. 29, line 6; and p. 37, lines 1 - 3). Finally, Claim 15 recites verifying a country of origin claim for the selected animal by comparing the determined locations to location(s) stated in the country of origin claim (Claim 15, lines 11 - 12; Specification, p. 29,

lines 13 - 19; p. 30, lines 12 - 17; p. 31, lines 19 - 21; p. 34, lines 4 - 13; and p. 37, lines 1 - 3; see also reference number **706** of **Fig. 7** and **640** of **Fig. 6**).

12. In a second aspect as claimed in independent Claim 16, Appellant claims a system for uniquely identifying transfers of animals in groups (Claim 16, line 1; Specification, p. 6, lines 16 - 18 and p. 9, lines 10 - 12). The system comprises a unique identifier associated with each transfer of a group of animals (Claim 16, line 3; Specification, p. 6, lines 15 - 18; p. 8, lines 15 - 17; and p. 9, lines 10 - 12). The system also comprises a repository for recording the unique identifier of each transfer, along with a specification of how many animals are in the transferred group and an identification of transferor(s) and transferee(s) who are parties to the transfer (Claim 16, lines 4 - 6; Specification, p. 6, line 24 - p. 7, line 1 and p. 29, line 22 - p. 30, line 12; see also reference numbers **701**, **705**, **703**, and **704** of **Fig. 7**). The system also comprises linkage from each subsequent transfer of any of the animals in the group to a most-recent prior transfer of those animals, the linkage comprising a specified association between a new unique identifier associated with the subsequent transfer and the unique identifier of the prior transfer (Claim 16, lines 7 - 9; Specification, p. 30, lines 1 - 7; see also reference numbers **701** and **707** of **Fig. 7**, where the two different unique identifiers are specified in a sample database record format).

13. For example, row **710** of **Fig. 7** illustrates a unique identifier “04004321” associated with a transfer of a group comprising 40 animals; a repository generally represented for recording information **700** that comprises – for this particular row – the unique identifier at **701**; a specification of how many animals are in the group at **705**; an identification of a transferor at **703**



and a transferee at **704**; and linkage comprising an association between the “new” unique identifier at **701** and the unique identifier “03000001” at **707** which uniquely identifies a prior transfer. This row corresponds to “Passport 4” in **Fig. 1** (which corresponds to sample passport **300** in **Fig. 3A**), where 40 animals are transferred from “Auction barn” to “Feedlot A”; the prior transfer represented at **707** is the transfer shown in **Fig. 1** as “Passport 1” (which corresponds to sample passport **200** in **Fig. 2**), where the 40 animals were previously transferred in a group of 100 animals.

14. Claim 17 is a dependent claim that depends from Claim 16. Claim 17 recites that the linkage enables tracing transfers of a subset of animals (where the subset comprises one or more of the transferred animals from the group) by accessing the specified association for each of the transfers of the animals in the subset (Specification, p. 28, line 22 - p. 29, line 6). For example, the previous transfer of the 40 animals transferred in the transfer represented by passport “04004321” at **701** can be determined using the associated previous passport number “030000031” at **707**.

15. In a third aspect as claimed in independent Claim 18, Appellant claims a method for identifying transfers of groups of animals from birth to death (Claim 18, line 1; Specification, p. 6, lines 16 - 18; p. 8, lines 19 - 21; and p. 10, lines 20 - 21; Abstract, sentences 3 - 5). A unique identifier is associated with each transfer of animals from an original owner (Claim 18, line 3; Specification, p. 6, lines 16 - 18; p. 8, lines 15 - 17; and p. 10, line 21 - p. 11, line 3; see also reference number **205** of **Fig. 2**). A different unique identifier is associated with each subsequent

transfer of those animals or any subset of them (Claim 18, lines 4 - 5; Specification, p. 6, lines 18 - 21 and p. 11, lines 11 - 18; see also reference number **305** of **Fig. 3A**). At each subsequent transfer, the different unique identifier is linked with the unique identifier associated with a most-recent previous transfer of the subsequently-transferred animals (Claim 18, lines 6 - 8; Specification, p. 6, lines 18 - 24 and p. 8, lines 15 - 21; see also reference numbers **305**, **371** of **Fig. 3A** and **701**, **705** of **Fig. 7**).

16. For an example of the scenario described in Claim 18, refer to paragraph 13, above.

17. Claim 19 is a dependent claim which depends from Claim 18, and recites that additional animals are included in one or more of the subsequent transfers, and that the unique identifier of the most-recent previous transfer of those additional animals is also linked with the different unique identifier of the subsequent transfer (Specification, p. 11, line 20 - p. 12, line 3 and p. 17, lines 4 - 5; see also Specification, p. 16, lines 19 - 24, referring to the scenario illustrated by passport **380** of **Fig. 3B**, where 27 cattle are recorded therein as joining together in a transfer with the 60 cattle previously transferred under passport **300** of **Fig. 3A**, thus necessitating 2 different unique identifiers of “most-recent previous” transfers at **391**, **392**).

18. In a fourth aspect as claimed in independent Claim 21, Appellant claims a method of providing country of origin claims (Claim 21, line 1; Specification, p. 25, lines 18 - 21 and p. 26, line 23 - p. 27, line 2). A passport document is completed to represent each of a plurality of transfers of one or more animals, each passport document having a unique passport identifier

associated therewith in order to provide a unique identifier for the transfer (Claim 21, lines 2 - 5; Specification, p. 6, lines 15 - 22 and p. 8, lines 9 - 17)). The passport document specifies a count of the animals transferred, descriptive information for those animals, and a location of the transfer (Claim 21, lines 6 - 7; Specification, p. 12, line 20 - p. 13, line 6; see also reference numbers **210**, **212**, and **214** of **Fig. 2**). The passport document also specifies the unique passport identifier associated with any previous passport document which was completed to represent a previous transfer of the transferred animals (Claim 21, lines 8 - 10; Specification, p. 8, lines 17 - 21; see also reference numbers **391**, **392** of **Fig. 3B**). The passport document is signed by the transferor and transferee to certify the transfer (Claim 21, lines 11 - 12; Specification, p. 13, lines 8 - 14 and p. 21, lines 21 - 24; see also reference numbers **220 - 230** and **240 - 250** of **Fig. 2**). Each of the transfers is recorded in a third-party repository (Claim 21, lines 13 - 14; Specification, p. 9, lines 20 - 21; p. 10, lines 3 - 4; and p. 24, lines 17 - 19) by creating an entry in the repository for each transfer, each of the entries comprising the unique passport identifier associated with the passport document which represents that transfer, information from the passport document (in particular, the count of animals transferred, the descriptive information for those animals, and the location of the transfer), and the unique passport identifier associated with any previous passport document completed to represent a previous transfer of the animals (Claim 21, lines 15 - 19; Specification, p. 29, line 22 - p. 30, line 23; and p. 31, lines 19 - 22; see also reference number **700** of **Fig. 7**). The entries in the repository are used to determine, for a selected animal, whether a country of origin claim can be made stating that the selected animal was always physically located in a particular country; this comprises comparing the location in each of the entries pertaining to the selected animal to the particular country (Claim 21, lines 21 - 24; Specification, p. 25, lines 18 -

21; p. 26, lines 1 - 5; p. 26, line 23 - p. 27, line 2; p. 28, line 22 - p. 29, line 6; and p. 34, lines 4 - 13; see also reference numbers **640** of **Fig. 6** and **706** of **Fig. 7**).

## **6) GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

19. The **Ground of Rejection** presented for review is a rejection of Claims 1 - 19 and 21 under 35 U.S.C. §102(b) as being anticipated by U. S. Patent Publication 2003/0177025 to Curkendall, et al. (hereinafter, “Curkendall”), according to the Office Action mailed January 9, 2009 (hereinafter, “the Office Action”).

## **7) ARGUMENT**

20. MPEP §2131, which is titled “TO ANTICIPATE A CLAIM, THE REFERENCE MUST TEACH EVERY ELEMENT OF THE CLAIM”, quotes a Federal Circuit holding which states “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), emphasis added.

21. Appellant also notes the holding of the Federal Circuit in *Motorola, Inc. v. Interdigital Technology Corp.*, 43 USPQ 2d 1481, 1490 (Fed. Cir. 1997), which stated

For a prior art reference to anticipate a claim, the reference must disclose each and every element of the claim with sufficient clarity to prove its existence in the prior art. *See In re Spada*, 911 F.2d 705, 708, 15 USPQ 2d 1655, 1657 (Fed. Cir. 1990) (“[T]he [prior art] reference must describe the applicant’s claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it.” (citations omitted)). Although this disclosure requirement presupposes the knowledge of one skilled in the art of the claimed

invention, that presumed knowledge does not grant a license to read into the prior art reference teachings that are not there. (emphasis added)

22. Appellant will demonstrate, below, that a *prima facie* case of anticipation under 35 U.S.C. §102 has not been made out as to his Claims 1 - 19 or 21, as the cited reference fails to disclose each and every claim element set forth in these claims in violation of the above-quoted MPEP §2131.

### **7.1) Ground of Rejection**

23. Paragraph 3 of the Office Action states that Claims 1 - 19 and 21 are rejected under 35 U.S.C. §102(e) as being anticipated by U. S. Patent Publication 2003/0177025 to Curkendall, et al. (hereinafter, “Curkendall”). Of these, the independent claims are Claims 1, 16, 18, and 21. All claims have been discussed above in “**5) Summary of Claimed Subject Matter**”.

#### **7.1.1) Rejection of Independent Claim 1**

24. Referring first to independent Claim 1<sup>1</sup>, Appellant respectfully submits that Curkendall does not disclose all of the claim elements recited therein, as will now be demonstrated.

25. With regard to the “assigning a unique passport identifier to the created animal passport, thereby providing a unique identification of the transfer” claim element recited on lines 4 - 5 of Appellant’s Claim 1 (emphasis added), the Office Action cites para. [0020] of Curkendall as teaching

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<sup>1</sup> See paragraphs 1 - 2, above, for a discussion of the claim language recited in Claim 1.

it is desirable to automate the identification and data entry in order to reduce expense and to improve accuracy of the data. These devices typically produce either a unique alphanumeric code or a unique decimal code.

Office Action, p. 3, lines 3 - 7 (emphasis added).

26. Appellant respectfully disagrees with this analysis of his claim language. The “devices [that] typically produce either a unique alphanumeric code or a unique decimal code”, as stated in para. [0020], are devices for uniquely identifying an animal. See, for example, the subsequent paragraph [0021], which discusses “electronic identification devices and systems” for “providing identification of livestock” (para. [0021], lines 1 - 3, emphasis added). Because the device is used for identifying an animal, it necessarily follows that the device must always produce the same code/identifier in order to continually and consistently identify that animal.

27. Examples of such devices are discussed in paras. [0021] - [0025], and include “a transponder carried with the individual animal on a collar” (para. [0021], lines 7 - 8). Thus, when the individual animal passes by a reader device, the reader will detect the unique code produced by the transponder carried with the animal and a determination can therefore be made as to which animal has passed by the reader device. Other such unique-code-producing devices discussed by Curkendall include “a transponder implanted in the animal” (para. [0021], line 14); “a bolus [designed to be swallowed by the animal and retained in, and transmit signals from, the animal’s stomach] such as illustrated ... in U.S. Pat. No. 4,262,632” (para. [0021], lines 19 - 20); and an RFID tag (para. [0022]). In the same manner, when an animal using one of these unique-code-producing devices passes by a reader device, the reader will detect the unique code from the

device and a determination can therefore be made as to which animal has passed by the reader device.

28. See also para. [0108], discussing ways of uniquely identifying an animal that include an RFID ear tag 32 or as alternatives, “an RFID implant, a rumen bolus [i.e., a bolus to be retained in the rumen section of the animal’s stomach], or a collar fitting on a neck or leg”; para. [0110], which discusses capturing an animal’s identification using its RFID, implant, or bolus transponder; and para. [0205], which also discusses use of “... transponders 32 in the form of electronic ear tags, implants, boli[,] or neck or leg collars to provide unique identification for each animal”, emphasis added.

29. Providing a unique identification of an animal by transmitting a unique code from a device carried by (or in) the animal, according to the cited para. [0020] (and further explained in subsequent paragraphs of Curkendall, as demonstrated above in paras. 26 - 28), is distinct from Appellant’s recited “... providing a unique identification of the transfer” (Claim 1, lines 4 - 5, emphasis added). For example, if a particular cow is transferred multiple times, Curkendall’s para. [0020] indicates that the device attached to that cow would always transmit the same code to uniquely identify this particular cow, whereas lines 4 - 5 of Appellant’s Claim 1<sup>2</sup> recites assigning a unique (i.e., different) identifier to each of these multiple transfers.

30. In the **Response to Arguments** section of the Office Action, para. [0022] is cited, stating

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<sup>2</sup> with reference also to the “repeating ...” recited in Claim 1, lines 6 - 9

that this paragraph “discusses individual animal identification”. Office Action, p. 15, lines 6 - 8.

Appellant agrees with this interpretation of para. [0022]. However, using a device that uniquely identifies an individual animal, according to para. [0022], is distinct from Appellant’s recited claim language where what is uniquely identified is a transfer of animals (via a unique identifier assigned to an animal passport that represents the transfer); see Claim 1, lines 2 - 5.

31. Note also that Appellant’s claim language recites “creating an animal passport to represent a transfer of animals ...”, using animals in the plural with passport in the singular (Claim 1, lines 2 - 3). That is, one passport represents a transfer of multiple animals, according to lines 2 - 3 of Claim 1. Lines 4 - 5 of Claim 1 then recite assigning “a” unique passport identifier to this animal passport, and this unique passport identifier therefore represents a transfer of multiple animals. The individual animal identifier discussed in the cited para. [0020], and in para. [0022] as discussed on p. 15 of the Office Action, clearly does not represent a transfer of multiple animals.<sup>3</sup>

32. Accordingly, as has been demonstrated above, the Office Action fails to establish that Curkendall teaches “each and every element” as set forth in the claim language recited on lines 4 -

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<sup>3</sup> Appellant notes that p. 15, lines 2 - 3 of the Office Action dated July 3, 2008 states “it is noted in several sections of the prior art including [0032] that the events can be applied to groups of animals”. However, Appellant respectfully submits that there is no teaching that a single, unique identifier would be used for each event that is applied to a group of animals, in contrast to Appellant’s recited “a unique passport identifier” and “a unique identification of the transfer”. Rather, it appears that Curkendall would use a distinct identifier (such as the distinct time-stamps described in para. [0237]) each time an event is applied to one of the animals in the group.



5 of Claim 1, and a *prima facie* case of anticipation has therefore not been made out according to the above-cited MPEP §2131.

33. Referring next to the “repeating the creating and assigning ...” element recited on lines 6 - 9 of Claim 1, the Office Action cites para. [0022] as teaching the “repeating the creating and assigning for each of at least one subsequent transfer of one or more of the animals” portion of the recited claim language (Claim 1, lines 6 - 7), stating

via there is a need to provide a means for individual animal identification throughout the production cycle and to minimize the difficulty of data entry throughout the industry

Office Action, p. 3, lines 8 - 11 (emphasis added).

34. Appellant agrees that this the cited para. [0022] describes individual animal identification. However, this is not what Appellant has claimed. Instead, Appellant’s claim language recites providing a unique identifier of a transfer (see the antecedent at lines 2 - 5 of Claim 1), not a unique identifier of an individual animal (where this animal-specific identifier remains unchanged throughout all transfers of that animal), as has been discussed above in detail with regard to the claim language recited on lines 4 - 5 of Claim 1.

35. For the “wherein the animal passport created for each subsequent transfer also records the unique passport identifier assigned to each most-recent previous transfer of those animals” claim language (Claim 1, lines 7 - 9), the Office Action cites para. [0029] of Curkendall as teaching

discusses complete source verification and performance databases for all

key livestock events

Office Action, p. 3, lines 11 - 14.

36. Appellant respectfully submits that the quoted text from para. [0029] Curkendall clearly fails to establish Appellant's recited "animal passport created for each subsequent transfer also records the unique passport identifier assigned to each most-recent previous transfer ..." (Claim 1, lines 7 - 9) with sufficient clarity to prove its existence in the prior art. For example, where does this cited text disclose anything about "also record[ing] the unique passport identifier assigned to each most-recent previous transfer" (emphasis added)? Accordingly, a *prima facie* case of anticipation has not been made out according to the above-quoted *Motorola, Inc.*

37. In view of paragraphs 25 - 36, above, Appellant respectfully submits that the Office Action fails to make out a *prima facie* case of anticipation as to independent Claim 1. Without more, independent Claim 1 is deemed patentable. See *In re Oetiker*, 24 USPQ 2d 1443, 1444 (Fed. Cir. 1992), which stated:

If the examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent.

#### **7.1.2) Rejection of Dependent Claim 2**

38. Appellant respectfully submits that the Office Action fails to make out a *prima facie* case of anticipation as to Claim 2<sup>4</sup>, as will now be demonstrated.

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<sup>4</sup> See paragraph 3, above, for a discussion of the claim language recited in Claim 2.

39. Claim 2 recites “each of the animal passports is signed by a transferor and transferee who are parties to the transfer ...”. The Office Action cites para. [0237] of Curkendall, stating “The data can be time-stamped which is construed as signing”. Office Action, p. 3, lines 15 - 19. It is clear that Appellant’s claim language recites two “signed by” parties, namely (1) a transferor and (2) a transferee. If Curkendall’s time-stamp supposedly provides a signing, is this the signing by (1) the transferor or by (2) the transferee? Or does the Office Action assert that particular data is time-stamped twice, in order to align to the claim language recited by Appellant? In the first case, one of the time-stamps recited by Appellant is missing, and in the second case, it is clear that Curkendall does not disclose providing two time-stamps for the same data. Under either of these interpretations, the cited paragraph fails to disclose what Appellant has claimed in Claim 2. Appellant therefore respectfully disagrees with the Office Action analysis of Claim 2, and respectfully submits that the Office Action fails to establish that Curkendall teaches “each and every element” as set forth in Claim 2.

40. In view of para. 39 above, Appellant respectfully submits that a *prima facie* case of anticipation has not been made out according to the above-cited MPEP §2131. Without more, Claim 2 is deemed patentable according to the above-quoted *In re Oetiker*.

### **7.1.3) Rejection of Dependent Claims 3 - 10**

41. Dependent Claims 3 - 10 are not argued separately herein, and therefore stand or fall with the allowability of Claim 1 from which they depend. Thus, these dependent claims are deemed allowable by virtue of the allowability of independent Claim 1, the patentability of which is

discussed above in “**7.1.1) Rejection of Independent Claim 1**”.

#### **7.1.4) Rejection of Dependent Claim 11**

42. Appellant respectfully submits that the Office Action fails to make out a *prima facie* case of anticipation as to Claim 11<sup>5</sup>, as will now be demonstrated.

43. Claim 11 recites “the animal passports further specify individual animal identifications of the transferred animals”. The Office Action cites para. [0011] of Curkendall as teaching Claim 11, stating that para. [0011] “discusses tracking individual animals”. Office Action, p. 6, lines 5 - 7. Appellant agrees that para. [0011] discusses tracking individual animals; however, this is not what is recited in Claim 11 when Claim 11 is considered in context of Claim 1. Notably, Appellant’s recited animal passport (singular) represents a transfer of animals (plural) according to the antecedent on lines 2 - 3 of Claim 1. In this context, it is clear that Claim 11 refers to specifying multiple animal identifications on a single animal passport – that is, an animal identification of each of the transferred animals – and para. [0011] has no teaching of specifying identifications of multiple animals on anything that can be correlated to Appellant’s (single) animal passport. Accordingly, the Office Action reference to tracking individual animals fails to establish that Curkendall teaches “each and every element” as set forth in Claim 11.

44. In view of para. 43 above, Appellant respectfully submits that a *prima facie* case of anticipation has not been made out according to the above-cited MPEP §2131. Without more,

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<sup>5</sup> See paragraph 7, above, for a discussion of the claim language recited in Claim 11.

Claim 11 is deemed patentable according to the above-quoted *In re Oetiker*.

#### **7.1.5) Rejection of Dependent Claim 12**

45. Appellant respectfully submits that the Office Action fails to make out a *prima facie* case of anticipation as to Claim 12,<sup>6</sup> as will now be demonstrated.

46. Claim 12 recites “additional animals are included in one or more of the subsequent transfers, and wherein the animal passport created for such subsequent transfers also records the unique passport identifier assigned to each most-recent previous transfer of those additional animals”. The Office Action cites para. [0029] of Curkendall as teaching Claim 12, stating that para. [0029] “discusses complete source verification and performance databases for all key livestock events”. Office Action, p. 6, lines 8 - 13. Appellant respectfully disagrees with this analysis. Where does para. [0029] disclose “additional animals are included” in a subsequent transfer (Claim 12, lines 1 - 2)? Where does para. [0029] disclose creating a passport for that subsequent transfer that has assigned thereto a unique identifier (referring to the antecedent in Claim 1, lines 2 - 5) and that records the unique passport identifier of each most-recent previous transfer of the animals (referring to the antecedent in Claim 1, lines 6 - 9) including the most-recent previous transfer of the additional animals (Claim 12, lines 2 - 4)? Appellant respectfully submits that the very-broad statement from para. [0029] which is relied upon in the Office Action clearly does not disclose this recited claim language from Claim 12. Thus, Appellant respectfully submits that the Office Action fails to establish that Curkendall teaches “each and every element”

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<sup>6</sup> See paragraph 8, above, for a discussion of the claim language recited in Claim 12.

as set forth in Claim 12.

47. In view of para. 46 above, Appellant respectfully submits that a *prima facie* case of anticipation has not been made out according to the above-cited MPEP §2131. Without more, Claim 12 is deemed patentable according to the above-quoted *In re Oetiker*.

#### **7.1.6) Rejection of Dependent Claim 13**

48. Appellant respectfully submits that the Office Action fails to make out a *prima facie* case of anticipation as to Claim 13<sup>7</sup>, as will now be demonstrated.

49. The Office Action fails to provide any citation for the claim language “wherein animal passports are created for each transfer during a lifetime of the animals”, as recited on lines 1 - 2 of Claim 13.

50. With reference to the “recording each of the animal passports ...” claim element recited on lines 3 - 7 of Claim 13, the Office Action cites paras. [0027], [0012], and [0214] of Curkendall. Office Action, p. 7, lines 1 - 15. However, as discussed above in section “**7.1.1) Rejection of Independent Claim 1**”, Appellant respectfully submits that the Office Action fails to establish that Curkendall discloses Appellant’s animal passports as recited in Claim 1. Accordingly, Appellant also respectfully submit that Curkendall fails to disclose recording such animal passports in a repository as recited on lines 3 - 7 of Claim 13.

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<sup>7</sup> See paragraph 9, above, for a discussion of the claim language recited in Claim 13.

51. With regard to the “determining a country of origin ...” claim element recited on lines 9 - 11 of Claim 13, the Office Action cites para. [0144] of Curkendall, stating

via the bottom half of the screen shows all events recording during the animal’s lifetime

Office Action, p. 7, lines 16 - 19.

52. Para. [0144] pertains to a device used for “work[ing] animals, which will usually be done at the working chute” (see the introductory text in para. [0142], lines 1 - 2). Para. [0144] is silent on a country of origin claim, as well as all locations in which selected animals have been located. Accordingly, Appellant respectfully submits that the quoted text from para. [0144] Curkendall clearly fails to establish Appellant’s recited “determining a country of origin ...” (Claim 13, lines 9 - 11) with sufficient clarity to prove its existence in the prior art, and a *prima facie* case of anticipation has therefore not been made out according to the above-quoted *Motorola, Inc.*

53. In view of paras. 49 - 52 above, Appellant respectfully submits that a *prima facie* case of anticipation has not been made out according to the above-cited MPEP §2131. Without more, Claim 13 is deemed patentable according to the above-quoted *In re Oetiker*.

#### **7.1.7) Rejection of Dependent Claim 14**

54. Appellant respectfully submits that the Office Action fails to make out a *prima facie* case of anticipation as to Claim 14<sup>8</sup>, as will now be demonstrated.

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<sup>8</sup> See paragraph 10, above, for a discussion of the claim language recited in Claim 14.

55. With reference to the “each of the animal passports further comprises ...” claim element recited on lines 2 - 5 of Claim 14, the Office Action cites para. [0131] of Curkendall as teaching

core events in the data collection supply chain including identification, location, transfer and origin.

Office Action, p. 8, lines 1 - 6.

56. Appellant respectfully disagrees with this analysis. While Appellant acknowledges that para. [0131] does discuss a number of different “core events”, these are described as individual events that may apply at various times during an animal’s lifetime. There is no discussion in para. [0131] that multiple ones of these events appear on the same passport, and no discussion of a single passport (that is, “each of the animal passports”; Claim 14, line 2, emphasis added) that includes (1) a specification of how many animals were transferred; (2) a location of the animals during a timeframe covered by the animal passport, and (3) an identification of (i) one or more transferors and (ii) one or more transferees who are parties to the transfer, in contrast to the claim language as recited on lines 2 - 5 of Claim 14. Furthermore, the cited para. [0131] fails to disclose a passport that includes of all this information and that has a unique passport identifier assigned thereto, referring to the antecedent as recited in Claim 1.

57. Regarding the “preparing a country of origin claim ...” claim element recited on lines 10 - 12 of Claim 14, the Office Action cites para. [0363] of Curkendall as teaching

these 16 items support the current reporting needs of the IQSBN to track



animal origin, genetics and production information.

Office Action, p. 8, lines 12 - 16.

58. Appellant respectfully disagrees with this analysis. The claim language recited on lines 10 - 12 of Claim 14 explicitly states “preparing a country of origin claim [that] indicates whether the selected animal has been located only in a selected country ...” (emphasis added). Para. [0363] fails to disclose preparing any kind of “claim” that indicates whether an animal has been located only in a selected country. Instead, para. [0363] refers to **Fig. 54** as providing “a report ... to show information for each animal”, and Appellant notes that **Fig. 54** provides rows of information, none of which indicates any type of “claim” about whether [or not] an animal has been located only in a selected country.

59. In view of paras. 55 - 58 above, Appellant respectfully submits that a *prima facie* case of anticipation has not been made out according to the above-cited MPEP §2131. Without more, Claim 14 is deemed patentable according to the above-quoted *In re Oetiker*.

#### **7.1.8) Rejection of Dependent Claim 15**

60. Appellant respectfully submits that the Office Action fails to make out a *prima facie* case of anticipation as to Claim 15<sup>9</sup>, as will now be demonstrated.

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<sup>9</sup> See paragraph 11, above, for a discussion of the claim language recited in Claim 15.

61. With reference to the “recording each of the animal passports in a repository...” claim element recited on lines 3 - 6 of Claim 15, the Office Action cites para. [0027] of Curkendall as teaching

at different stages of the production cycle, there are different databases, which exist for different business purposes. The rancher will typically maintain his own database, a stockman will have an inventory system, a feedlot will have a management database, and a packer will have its own inventory and management system.

Office Action, p. 9, lines 5 - 13.

62. Appellant respectfully disagrees with this analysis. While Appellant acknowledges that para. [0027] generally discusses databases, there is no discussion in para. [0027] of a single passport (that is, “each of the animal passports”; Claim 15, lines 3 - 4, emphasis added) that comprises a specification of (1) how many animals are represented by the transfer [which is represented by that passport, according to the antecedent in Claim 1]; (2) a location of the animals during a timeframe covered by the animal passport, and (3) an identification of (i) one or more transferors and (ii) one or more transferees who are parties to the transfer, in contrast to the claim language as recited on lines 3 - 6 of Claim 15. Furthermore, para. [0027] fails to disclose a passport that includes of all this information and that has a unique passport identifier assigned thereto, referring to the antecedent as recited in Claim 1.

63. In the **Response to Arguments** section of the Office Action, **Fig. 63** is cited, stating that this figure “depicts data elements depicting these features”. Office Action, p. 16, lines 10 - 12. Appellant respectfully disagrees with this interpretation of **Fig. 63**. For example, where does **Fig.**

63 disclose “a specification of how many animals are represented by each transfer”, and where does **Fig. 63** disclose “a location of the animals during a timeframe covered by the animal passport [that represents a transfer]”?

64. With regard to the “constructing a chain of transfers ...” claim element recited on lines 7 - 10 of Claim 15, the Office Action cites para. [0012] of Curkendall as teaching

recording beginning, ending, and periodic weight measurements and treatments; and recording vaccinations, movement and ownership changes, and other significant events that have occurred in the animal’s life in order to track of the success of treatments as well as to eliminate duplicate treatments.

Office Action, p. 9, lines 14 - 21.

65. Appellant respectfully disagrees with this analysis. Appellant finds no discussion in para. [0012] of “constructing a chain of transfers”, or of “using each of the most-recent previous unique passport identifiers recorded on the animal passports”, in contrast to the claim language recited on lines 7 - 10 of Claim 15 (emphasis added).

66. In the **Response to Arguments** section of the Office Action, para. [0011] is cited, stating that this paragraph “explicitly discusses ‘movement and ownership changes’”. Office Action, p. 16, lines 13 - 15. Appellant respectfully disagrees with this interpretation of para. [0011]. First, Appellant respectfully submits that it is para. [0012] that “explicitly discusses” such changes, and not para. [0011]. Second, Appellant respectfully submits that neither para. [0011] or [0012] discloses his recited “constructing a chain of transfers ... using each of the most-recent previous

unique passport identifiers recorded on the animal passports ...” (Claim 15, lines 7 - 10, emphasis added) with sufficient clarity to prove its existence in the prior art, in violation of the above-quoted *Motorola, Inc.*

67. With regard to the “verifying a country of origin claim ... by comparing ...” claim language recited on lines 11 - 12 of Claim 15, the Office Action cites para. [0363] of Curkendall as teaching

these 16 items support the current reporting needs of the IQSBN to track animal origin, genetics and production information.

Office Action, p. 10, lines 1 - 4.

68. Appellant respectfully disagrees with this analysis. The claim language recited on lines 11 - 12 of Claim 15 explicitly states “verifying a country of origin claim ... by comparing the determined locations to one or more locations stated in the country of origin claim.” (emphasis added). Para. [0363] fails to disclose a “country of origin claim”, “one or more locations” stated in such claim, or “comparing the determined locations to ... locations stated in [such] claim”. The report illustrated in **Fig. 54** and discussed in para. [0363] also fails to disclose such information.

69. In the **Response to Arguments** section of the Office Action, para. [0363] is cited again (misstated as para. [0636]), stating that this paragraph “discloses 16 points including origin”.

Office Action, p. 16, lines 16 - 18. Appellant respectfully disagrees with this interpretation of para. [0363]. While para. [0363] does contain the word “Origin”, Appellant finds no discussion of how this term is used. An equally plausible interpretation of “Origin” in para. [0363] is that

this is a specification of where an animal was born. This is clearly distinct from the “chain of transfers” recited in Claim 15 for determining “all locations in which the selected animal has been located throughout its lifetime” (Claim 15, lines 7 - 10, emphasis added), where those locations are then used to verify a country of origin claim as recited in lines 11 - 12. Furthermore, Appellant finds no discussion in para. [0363] of location and no discussion of a country of origin claim. Therefore, Appellant respectfully submits that para. [0363] fails to disclose his recited “verifying a country of origin claim ...” (Claim 15, lines 11 - 12) with sufficient clarity to prove its existence in the prior art, in violation of the above-quoted *Motorola, Inc.*

70. In view of paras. 61 - 69 above, Appellant respectfully submits that a *prima facie* case of anticipation has not been made out according to the above-cited MPEP §2131. Without more, Claim 15 is deemed patentable according to the above-quoted *In re Oetiker*.

#### **7.1.9) Rejection of Independent Claim 16**

71. Referring next to independent Claim 16,<sup>10</sup> Appellant respectfully submits that Curkendall does not disclose all of the claim elements recited therein, as will now be demonstrated.

72. With regard to the “a unique identifier associated with each transfer of a group of animals” claim element recited on line 3 of Claim 16 (emphasis added), the Office Action cites para. [0205] of Curkendall as teaching

although the data collection system can operate manually with visual animal

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<sup>10</sup> See paragraphs 12 - 13, above, for a discussion of the claim language recited in Claim 16.

identification, the preferred operation is with Radio Frequency Identification (RFID) transponders 32 in the form of electronic ear tags, implants, boli or neck or leg collars to provide unique identification for each animal.

Office Action, p. 10, lines 7 - 11 (emphasis added).

73. Appellant respectfully submits that this cited text from para. [0205] is clearly referring to unique identifiers of animals. This is not what Appellant has claimed on line 3 of Claim 16; instead, Appellant has claimed a unique identifier associated with each transfer of a group of animals. Associating a unique identifier with a transfer, as recited in Claim 16, is not the same as associating a unique identifier with an animal as discussed in para. [0205]. Furthermore, this claim language refers to animals in the plural, and it necessarily follows that associating a (single) unique identifier with a transfer of multiple animals is different from Curkendall's described unique animal identifiers where there would be multiple unique identifiers corresponding to the animals transferred in the group (i.e., one unique identifier for each of the transferred animals).<sup>11</sup> Appellant also respectfully notes that para. [0205] is silent as to "transfer" and to "group of animals".

74. Accordingly, as has been demonstrated above, the Office Action fails to establish that Curkendall teaches "each and every element" as set forth in the claim language recited on line 3 of Claim 16, and a *prima facie* case of anticipation has therefore not been made out according to the

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<sup>11</sup> See also paras. 26 - 31, above, which discuss Curkendall's unique identifiers of individual animals – in contrast to Appellant's recited unique identifier of a transfer – in more detail.

above-cited MPEP §2131.

75. With regard to the “a repository for recording the unique identifier of each of the transfers, along with a specification of how many animals are in the group ...” claim element recited on lines 4 - 6 of Claim 16 (emphasis added), the Office Action cites para. [0027] of Curkendall as teaching

at different stages of the production cycle, there are different databases, which exist for different business purposes. The rancher will typically maintain his own database, a stockman will have an inventory system, a feedlot will have a management database, and a packer will have its own inventory and management system

Office Action, p. 10, line 12 - p. 11, line 3.

76. Appellant acknowledges that para. [0027] generally discusses databases. However, there is no discussion in para. [0027] of a repository that records a unique identifier of each transfer of a group of animals (Claim 16, line 4), and there is also no discussion in para. [0027] of also recording a specification of how many animals are in the group (Claim 16, lines 4 - 5) and an identification of the transferor(s) and transferee(s) (Claim 16, lines 5 - 6). The cited para. [0027] therefore fails to establish Appellant’s recited claim language with sufficient clarity to prove its existence in the prior art, and a *prima facie* case of anticipation has therefore not been made out according to the above-quoted ***Motorola, Inc.***

77. In the **Response to Arguments** section, the Office Action further cites para. [0032] and **Fig. 63**. Office Action, p. 17, lines 3 - 7. However, Appellant respectfully notes that the cited para. [0032], and **Fig. 63** are silent as to recording “how many animals are in the group” and an identification of transferor(s) and also of transferee(s). Furthermore, Appellant respectfully submits that para. [0032] and **Fig. 63** of Curkendall fail to disclose, with sufficient clarity to prove its existence in the prior art, that a (singular) transfer of (plural) animals has associated therewith a (singular) unique identifier; instead, it appears that Curkendall would use a distinct identifier for an “event” associated with each animal, and the Office Action has not demonstrated existence of any teaching provided “with sufficient clarity to prove its existence” in Curkendall where a single unique identifier corresponds to a transfer of multiple animals.

78. Accordingly, as has been demonstrated above, the Office Action fails to establish that Curkendall teaches “each and every element” as set forth in the claim language recited on lines 4 - 6 of Claim 16, and a *prima facie* case of anticipation has therefore not been made out according to the above-cited MPEP §2131.

79. With regard to the “linkage from each subsequent transfer of any of the animals to a most-recent prior transfer of those animals ...” claim element recited on lines 7 - 9 of Claim 16 (emphasis added), the Office Action cites para. [0395] of Curkendall as teaching

via a live animal is uniquely identified with an Animal ID. This Animal ID is common through changes of ownership of the live animal. Changes in ownership of the live animal are recorded as events for both the seller and the buyer where an event detail identifies the buyer and the seller, respectively.



Office Action, p. 11, lines 4 - 10 (emphasis added).

80. Appellant respectfully disagrees with this analysis. It is clear that the cited text from para. [0395] is discussing an individual animal. By sharp contrast, the claim language recited on lines 7 - 9 of Claim 16 describes “linkage” in terms of identifiers associated with a transfer of a group of animals: that is, in the claim language “specified association between a new unique identifier ... and the unique identifier of the prior transfer”, the portion “unique identifier of the prior transfer” has its antecedent on line 3, referring to a transfer of a group of animals. A unique identifier of a transfer of a group of animals is distinct from Curkendall’s unique identifier of a particular animal as recited in para. [0395]. Furthermore, the identifiers referred to in Claim 16 are identifiers of transfers, not identifiers of (individual) animals as described by Curkendall in para. [0395].

81. In addition, whereas para. [0395] explicitly specifies that an animal’s ID is “common [that is, unchanged] through changes of ownership”, lines 7 - 9 of Appellant’s Claim 16 recite a new unique identifier associated with “each such subsequent transfer” of the animals. See, for example, Appellant’s **Fig. 1**, where a group of 80 cattle is transferred from “Ranch C” to “Order Buyer” and then from “Order Buyer” to “Feedlot B”. Even though the same 80 cattle are in both transfers (Specification, p. 18, lines 8 - 11), the transfers have different, unique identifiers. Those transfers are represented in **Fig. 1** by “Passport 3” and “Passport 6”, respectively. The “unique identifier” recited on line 3 of Claim 16 and the “unique identifier of the prior transfer” recited on line 9 of Claim 16 correspond, in this example, to “Passport 3”, whereas the “new unique

identifier” recited on line 8 of Claim 16 corresponds to “Passport 6”.

82. Appellant also notes that the cited para. [0395] is silent on “a specified association between a new unique identifier associated with each subsequent transfer and the unique identifier of the prior transfer” (emphasis added). How, for example, is an animal ID that does not change supposedly equated to identifiers of transfers, where these transfer identifiers are recited as being unique (i.e., different) from one transfer to the next transfer?

83. Accordingly, as has been demonstrated above, the Office Action fails to establish that Curkendall teaches “each and every element” as set forth in the claim language recited on lines 7 - 9 of Claim 16, and a *prima facie* case of anticipation has therefore not been made out according to the above-cited MPEP §2131.

84. In view of paragraphs 72 - 83, above, Appellant respectfully submits that the Office Action fails to make out a *prima facie* case of anticipation as to independent Claim 16. Without more, independent Claim 16 is deemed patentable according to the above-quoted *In re Oetiker*.

#### **7.1.10) Rejection of Dependent Claim 17**

85. Appellant respectfully submits that the Office Action fails to make out a *prima facie* case of anticipation as to Claim 17<sup>12</sup>, as will now be demonstrated.

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<sup>12</sup> See paragraph 14, above, for a discussion of the claim language recited in Claim 17.

86. Claim 17 recites “the linkage enables tracing transfers of a subset ... of the transferred animals by accessing, for each of the transfers of the animals in the subset, the specified association between the unique identifier of the most-recent prior transfer and the new unique identifier of the subsequent transfer for that subset [of the animals]” (emphasis added). The Office Action cites para. [0395] of Curkendall as teaching

via a live animal is uniquely identified with an Animal ID. This Animal ID is common through changes of ownership of the live animal. Changes in ownership of the live animal are recorded as events for both the seller and the buyer where an event detail identifies the buyer and the seller, respectively.

Office Action, p. 11, lines 11 - 19 (emphasis added).

87. Appellant respectfully disagrees with the Office Action analysis of Claim 17, and asserts that the cited para. [0395] fails to establish Appellant’s recited claim language with sufficient clarify to prove its existence in the prior art as required according to the above-quoted *Motorola, Inc.* For example, where does para. [0395] disclose “tracing transfers of a subset” of animals? Where does para. [0395] disclose a “specified association between the unique identifier of the most-recent prior transfer and the new unique identifier of the subsequent transfer ...”? In addition, it is clear that the identifiers recited in Claim 17 are identifiers of transfers. This is in sharp contrast to the unique identifier of an animal as described in the cited text from para. [0395].

88. In view of paras. 86 - 87 above, Appellant respectfully submits that a *prima facie* case of anticipation has not been made out according to the above-cited MPEP §2131. Without more,

Claim 17 is deemed patentable according to the above-quoted *In re Oetiker*.

#### 7.1.11) Rejection of Independent Claim 18

89. Referring next to independent Claim 18,<sup>13</sup> Appellant respectfully submits that Curkendall does not disclose all of the claim elements recited therein, as will now be demonstrated.

90. With regard to the “associating a unique identifier associated with a transfer of animals from an original owner thereof” claim element recited on line 3 of Claim 18 (emphasis added), the Office Action cites para. [0395] of Curkendall as teaching

changes in ownership of the live animal are recorded as events for both the seller and the buyer where an event detail identifies the buyer and the seller, respectively.

and states that **Fig. 63** “depicts the event data”. Office Action, p. 12, lines 3 - 6.

91. Appellant respectfully notes that Claim 18 explicitly recites that the “unique identifier” is an identifier associated with a transfer of animals (noting that “unique identifier” and “transfer” are recited in the singular and “animals” is recited in the plural). It is clear that para. [0395] is discussing a unique identifier of an individual animal. Whereas the Office Action analysis refers to “changes in ownership”, Appellant respectfully submits that this is not what is recited on line 3 of Claim 18. Where, for example, does para. [0395] or **Fig. 63** disclose a (single) unique identifier associated with a transfer of a plurality of animals? Appellant finds no such disclosure, and in

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<sup>13</sup> See paragraphs 15 - 16, above, for a discussion of the claim language recited in Claim 18.

particular, fails to find any disclosure of the claim language with sufficient clarity to prove its existence in the prior art as required by the above-quoted *Motorola, Inc.*

92. In the **Response to Arguments** section, the Office Action states “fig. 63 depicts data elements which include the event which is the transfer”. Office Action, p. 17, lines 8 - 11.

Appellant acknowledges that **Fig. 63** recites “Event” at **691e** and “Unique event ID” at **691b**.

However, Appellant is unable to find any disclosure with sufficient clarity to prove its existence in the prior art (in violation of the requirement stated in the above-cited *Motorola, Inc.*) that a (singular) transfer of (plural) animals has associated therewith a (singular) unique identifier; instead, it may happen that Curkendall would use a distinct identifier for an “event” associated with each animal, and the Office Action has not demonstrated existence of any teaching provided “with sufficient clarity to prove its existence” in Curkendall where a single unique identifier corresponds to a transfer of multiple animals.

93. Accordingly, as has been demonstrated above, the Office Action fails to establish that Curkendall teaches “each and every element” as set forth in the claim language recited on line 3 of Claim 18, and a *prima facie* case of anticipation has therefore not been made out according to the above-cited MPEP §2131.

94. With regard to the “associating a different unique identifier with each subsequent transfer ...” claim element recited on lines 4 - 5 of Claim 18, the Office Action cites para. [0395] of Curkendall as teaching

a live animal is uniquely identified with an Animal ID. This Animal ID is common through changes of ownership of the live animal. Changes in ownership of the live animal are recorded as events for both the seller and the buyer where an event detail identifies the buyer and the seller, respectively

Office Action, p. 12, lines 7 - 11 (emphasis added).

95. Appellant respectfully disagrees with this analysis. As has been stated repeatedly herein, the “identifier” recited in Appellant’s claim language is an identifier of a transfer, whereas the identifiers discussed in para. [0395] are identifiers of individual animals. And, as discussed in para. 81 above with regard to Claim 16 and passports 3 and 6 in **Fig. 1**, para. [0395] explicitly states that the animal IDs discussed therein remain “common”, or unchanged, through changes of ownership of the animal, which is in sharp contrast to Appellant’s claim language reciting a different unique identifier that is associated with each “subsequent transfer”.

96. Accordingly, as has been demonstrated above, the Office Action fails to establish that Curkendall teaches “each and every element” as set forth in the claim language recited on lines 4 - 5 of Claim 18, and a *prima facie* case of anticipation has therefore not been made out according to the above-cited MPEP §2131.

97. With regard to the “linking, at each subsequent transfer, the different unique identifier with the unique identifier associated with a most-recent previous transfer ...” claim element recited on lines 6 - 8 of Claim 18, the Office Action cites para. [0395] of Curkendall as teaching

a live animal is uniquely identified with an Animal ID. This Animal ID is common through changes of ownership of the live animal. Changes in ownership

of the live animal are recorded as events for both the seller and the buyer where an event detail identifies the buyer and the seller, respectively.

Office Action, p. 12, lines 12 - 17 (emphasis added).

98. Appellant respectfully disagrees with this analysis. The identifiers referred to in Claim 18 are identifiers of transfers, not identifiers of (individual) animals as described by Curkendall in para. [0395]. And, in contrast to the animal IDs that are “common” or unchanged through changes of ownership as stated in para. [0395] of Curkendall, lines 6 - 8 of Appellant’s Claim 18 explicitly recite linking a different unique identifier associated with a subsequent transfer (for example, a unique identifier associated with “Passport 6” of **Fig. 1**) with the unique identifier associated with a most-recent previous transfer (for example, a unique identifier associated with “Passport 3” of **Fig. 1**).

99. See also paras. 80 - 82, above, which discuss the “linkage” element recited on lines 7 - 9 of Claim 16. The discussions provided therein apply in an analogous manner to the “linkage” element recited on lines 6 - 8 of Claim 18.

100. Accordingly, as has been demonstrated above, the Office Action fails to establish that Curkendall teaches “each and every element” as set forth in the claim language recited on lines 6 - 8 of Claim 18, and a *prima facie* case of anticipation has therefore not been made out according to the above-cited MPEP §2131.

101. In view of paragraphs 90 - 100, above, Appellant respectfully submits that the Office Action fails to make out a *prima facie* case of anticipation as to independent Claim 18. Without more, independent Claim 18 is deemed patentable according to the above-quoted *In re Oetiker*.

#### **7.1.12) Rejection of Dependent Claim 19**

102. Appellant respectfully submits that the Office Action fails to make out a *prima facie* case of anticipation as to Claim 19,<sup>14</sup> as will now be demonstrated.

103. Claim 19 recites “additional animals are included in one or more of the subsequent transfers, and wherein the unique identifier of the most-recent previous transfers of those additional animals is also linked with the different unique identifier of the subsequent transfer”.

The Office Action cites para. [0395] of Curkendall as teaching

a live animal is uniquely identified with an Animal ID. This Animal ID is common through changes of ownership of the live animal. Changes in ownership of the live animal are recorded as events for both the seller and the buyer where an event detail identifies the buyer and the seller, respectively.

Office Action, p. 12, line 18 - p. 13, line 5 (emphasis added).

104. Appellant respectfully disagrees with this analysis. The identifiers referred to in Claim 19 are identifiers of transfers, not identifiers of (individual) animals as described by Curkendall in para. [0395]. And, in contrast to the animal IDs that are “common” or unchanged through changes of ownership as stated in para. [0395] of Curkendall, Appellant’s Claim 19 explicitly

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<sup>14</sup> See paragraph 17, above, for a discussion of the claim language recited in Claim 19.



recites a different unique identifier of a subsequent transfer. Furthermore, where does para. [0395] disclose “additional animals are included” in a subsequent transfer (Claim 19, lines 1 - 2)? Thus, Appellant respectfully submits that the Office Action fails to establish that Curkendall teaches “each and every element” as set forth in Claim 19.

105. In view of para. 104 above, Appellant respectfully submits that a *prima facie* case of anticipation has not been made out according to the above-cited MPEP §2131. Without more, Claim 19 is deemed patentable according to the above-quoted *In re Oetiker*.

#### **7.1.13) Rejection of Independent Claim 21**

106. Referring finally to independent Claim 21,<sup>15</sup> Appellant respectfully submits that Curkendall does not disclose all of the claim elements recited therein, as will now be demonstrated.

107. With regard to the “specifying, on the passport document, a count of the animals transferred, descriptive information for the animals transferred, and a location of the transfer” claim language recited on lines 6 - 7 of Claim 21 (emphasis added), the Office Action cites **Fig. 63** of Curkendall as “depict[ing] count, and descriptive information in the event detail field”. Office Action, p. 13, lines 13 - 15.

108. Appellant respectfully disagrees with this analysis. Appellant finds no reference to “count” in **Fig. 63**. Appellant notes that the claim language further recites “a location of the transfer”;

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<sup>15</sup> See paragraph 18, above, for a discussion of the claim language recited in Claim 21.

however, no discussion thereof is provided in the Office Action, and **Fig. 63** contains no reference to “location”. Accordingly, Appellant respectfully submits that the Office Action fails to establish that Curkendall discloses the claim language recited on lines 6 - 7 of Claim 21 with sufficient clarity to prove its existence in the prior art as required by the above-cited *Motorola, Inc.*

109. Accordingly, as has been demonstrated above, the Office Action fails to establish that Curkendall teaches “each and every element” as set forth in the claim language recited on lines 6 - 7 of Claim 21, and a *prima facie* case of anticipation has therefore not been made out according to the above-cited MPEP §2131.

110. For the “specifying, on the passport document, the unique passport identifier associated with any previous passport document ...” as recited on lines 8 - 10 of Claim 21 (emphasis added), the Office Action cites **Fig. 63**, stating that it “depicts the unique event ID”. Office Action, p. 13, lines 16 - 18.

111. Appellant respectfully disagrees with this assertion in the Office Action, and notes that the antecedent at lines 4 - 5 of Claim 21 recites that the passport document “has associated therewith a unique passport identifier”, and the “unique passport identifier” recited on lines 8 - 10 is clearly a different unique identifier for a different passport document – that is, the “unique passport identifier” recited on lines 8 - 10 is associated with a previous passport document that represents a previous transfer. Where is this use of two different passport identifiers illustrated in **Fig. 63**? In particular, if the “unique event ID” shown at **691b** in **Fig. 63** is for the previous transfer recited

on lines 8 - 10 of Claim 21, as apparently asserted in the Office Action, then where is the unique passport identifier associated with the passport document as recited in lines 2 - 5 of Claim 21? Appellant respectfully submits that **Fig. 63** does not disclose this use of two different passport identifiers.

112. Accordingly, as has been demonstrated above, the Office Action fails to establish that Curkendall teaches “each and every element” as set forth in the claim language recited on lines 8 - 10 of Claim 21, and a *prima facie* case of anticipation has therefore not been made out according to the above-cited MPEP §2131.

113. With regard to the “signing ... by the transferor and the transferee ...” claim language recited on lines 11 - 12 of Claim 21, the Office Action cites para. [0237] of Curkendall, stating “... The data can be time-stamped which is construed as signing”. Office Action, p. 14, lines 1 - 3.

114. As discussed above in para. 39 with reference to Claim 2, it is clear that the claim language recited on lines 11 - 12 of Appellant’s Claim 21 recites two “signed by” parties, namely (1) a transferor and (2) a transferee. As set out in para. 39 above, it is clear that the cited paragraph fails to disclose the use of two signatures as claimed by Appellant, and for the same reasons presented in para. 39, Appellant respectfully submits that the Office Action fails to establish that Curkendall teaches “each and every element” as set forth in the claim language recited on lines 11 - 12 of Claim 21.

115. The Office Action cites **Fig. 63** as teaching the “creating an entry ..., each of the entries comprising the unique passport identifier ... representing that transfer, the count of the animals transferred, the descriptive information for the animals ..., the location of the transfer, and the unique passport identifier associated with any previous passport document ... [that represents] a previous transfer ...” claim language recited on lines 15 - 19 of Claim 21 (emphasis added), stating “fig. 63 depicts creating an entry in the database for each of the events”. Office Action, p. 14, lines 8 - 14.

116. Appellant respectfully submits that the Office Action analysis of lines 15 - 19 of Claim 21 is reading teachings into **Fig. 63** which are not there, in violation of the above-quoted ***Motorola, Inc.*** In fact, **Fig. 63** is silent as to recording (at least) the count, the descriptive information, the location, and the unique identifier associated with the previous passport document. Refer also to paras. 107 - 112 above, where Appellant has demonstrated – with reference to the antecedent (i.e., lines 6 - 10 of Claim 21) for the claim language recited on lines 15 - 19 – that the Office Action fails to establish that Curkendall discloses these recitations from Claim 21.

117. Accordingly, as has been demonstrated above, the Office Action fails to establish that Curkendall teaches “each and every element” as set forth in the claim language recited on lines 15 - 19 of Claim 21, and a *prima facie* case of anticipation has therefore not been made out according to the above-cited MPEP §2131.

118. For the “using the entries in the repository to determine ... whether a country of origin

claim can be made ...” claim element recited on lines 21 - 24 of Claim 21, the Office Action cites **Fig. 63** and para. **[0131]**, stating that these “discuss entries of core events including origin”.

Office Action, p. 14, lines 15 - 19.

119. Appellant respectfully notes that **Fig. 63** does not contain the word “origin”, and para. **[0131]** simply says that “origin” is a core event. This in no way teaches “whether a country of origin claim can be made” (Claim 21, lines 21 - 22, emphasis added) nor does it teach “from its birth to its death” (with reference to a selected animal) or “by comparing, in each of the entries [as recited in the antecedent on lines 15 - 19] ... the location [from that entry] to the particular country [for which the country of origin claim is being determined]”. In fact, neither **Fig. 63** nor para. **[0131]** describes any type of “comparing”. Accordingly, Appellant respectfully submits that the Office Action fails to establish that Curkendall discloses the claim language recited on lines 21 - 24 of Claim 21 with sufficient clarity to prove its existence in the prior art as required by the above-cited *Motorola, Inc.*

120. Accordingly, as has been demonstrated above, the Office Action fails to establish that Curkendall teaches “each and every element” as set forth in the claim language recited on lines 21 - 24 of Claim 21, and a *prima facie* case of anticipation has therefore not been made out according to the above-cited MPEP §2131.

121. In view of paragraphs 107 - 120, above, Appellant respectfully submits that the Office Action fails to make out a *prima facie* case of anticipation as to independent Claim 21. Without

more, independent Claim 21 is deemed patentable according to the above-quoted *In re Oetiker*.

## **8) CONCLUSION**

For the reasons set out above, Appellant respectfully contends that each appealed claim is patentable, and respectfully request that the Examiner's Final Rejection of appealed Claims 1 - 19 and 21 be reversed.

Respectfully submitted,

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## CLAIMS APPENDIX

### CLAIMS AS CURRENTLY PRESENTED:

1 Claim 1: A method of tracking animal transfers with animal passports, the method comprising:

2 creating an animal passport to represent a transfer of animals from a transferor to a  
3 transferee;

4 assigning a unique passport identifier to the created animal passport, thereby providing a  
5 unique identification of the transfer; and

6 repeating the creating and assigning for each of at least one subsequent transfer of one or  
7 more of the animals, wherein the animal passport created for each subsequent transfer also  
8 records the unique passport identifier assigned to each most-recent previous transfer of those  
9 animals.

1 Claim 2: The method according to Claim 1, wherein each of the animal passports is signed by a  
2 transferor and transferee who are parties to each transfer, thereby certifying the transfer  
3 represented by the signed animal passport.

1 Claim 3: The method according to Claim 1, further comprising recording the animal passports in  
2 a repository that is maintained by a third party that is distinct from each transferor and each  
3 transferee who are parties to any of the transfers.

1 Claim 4: The method according to Claim 1, further comprising using the animal passport  
2 identifiers to track locations of the animals.

1 Claim 5: The method according to Claim 1, wherein the animal passports reflect a complete  
2 lifetime of the animals and are therefore usable to track transfers of the animals throughout their  
3 lifetime.

1 Claim 6: The method according to Claim 1, wherein the animal passports reflect a complete  
2 lifetime of the animals and are therefore usable to track locations of the animals throughout their  
3 lifetime.

1 Claim 7: The method according to Claim 1, wherein the transfers are transfers of ownership.

1 Claim 8: The method according to Claim 1, wherein the transfers are transfers of possession.

1 Claim 9: The method according to Claim 1, wherein at least one of the transfers is a transfer of  
2 ownership and at least one of the transfers is a transfer of possession.

1 Claim 10: The method according to Claim 1, wherein the creating and assigning are also repeated  
2 for subsequent transfers of animal products derived from the animals.

1 Claim 11: The method according to Claim 1, wherein the animal passports further specify  
2 individual animal identifications of the transferred animals.



1 Claim 12: The method according to Claim 1, wherein additional animals are included in one or  
2 more of the subsequent transfers, and wherein the animal passport created for such subsequent  
3 transfers also records the unique passport identifier assigned to each most-recent previous transfer  
4 of those additional animals.

1 Claim 13: The method according to Claim 1, wherein animal passports are created for each  
2 transfer during a lifetime of the animals and further comprising:

3 recording each of the animal passports in a repository maintained by a third party, wherein  
4 each of the animal passports further comprises a specification of how many animals are  
5 represented by each transfer, a location of the animals during a timeframe covered by the animal  
6 passport, and an identification of one or more transferors and one or more transferees who are  
7 parties to each transfer, wherein the third party is distinct from the transferors and the transferees;  
8 and

9 determining a country of origin for one or more selected ones of the animals using each  
10 unique passport identifier associated therewith to determine all locations in which the selected  
11 ones have been located throughout their lifetime.

1 Claim 14: The method according to Claim 1, wherein:

2 each of the animal passports further comprises a specification of how many animals were  
3 transferred in the transfer represented by that animal passport, a location of the animals during a  
4 timeframe covered by the animal passport, and an identification of one or more transferors and  
5 one or more transferees who are parties to that transfer; and

6 further comprising:

7 determining, for a selected one of the animals, all locations in which the selected  
8 animal has been located throughout its lifetime, using each animal passport associated with the  
9 selected animal; and

10 preparing a country of origin claim for the selected animal, using the determined  
11 locations, wherein the country of origin claim indicates whether the selected animal has been  
12 located only in a selected country throughout the lifetime of the animal.

1 Claim 15: The method according to Claim 1, wherein animal passports are created for each  
2 transfer during a lifetime of the animals and further comprising:

3 recording each of the animal passports in a repository, wherein each of the animal  
4 passports further comprises a specification of how many animals are represented by each transfer,  
5 a location of the animals during a timeframe covered by the animal passport, and an identification  
6 of one or more transferors and one or more transferees who are parties to each transfer;

7 constructing a chain of transfers for a selected one of the animals using each of the most-  
8 recent previous unique passport identifiers recorded on the animal passports associated with the  
9 selected animal, thereby determining all locations in which the selected animal has been located  
10 throughout its lifetime; and

11 verifying a country of origin claim for the selected animal by comparing the determined  
12 locations to one or more locations stated in the country of origin claim.

1 Claim 16: A system for uniquely identifying transfers of animals in groups, the system

2 comprising:

3 a unique identifier associated with each transfer of a group of animals;

4 a repository for recording the unique identifier of each of the transfers, along with a  
5 specification of how many animals are in the group and an identification of one or more  
6 transferors and one or more transferees who are parties to the transfer; and

7 linkage from each subsequent transfer of any of the animals to a most-recent prior transfer  
8 of those animals, the linkage comprising a specified association between a new unique identifier  
9 associated with each such subsequent transfer and the unique identifier of the prior transfer.

1 Claim 17: The system according to Claim 16, wherein the linkage enables tracing transfers of a  
2 subset comprising one or more of the transferred animals by accessing, for each of the transfers of  
3 the animals in the subset, the specified association between the unique identifier of the most-  
4 recent prior transfer and the new unique identifier of the subsequent transfer for that subset.

1 Claim 18: A method for identifying transfers of groups of animals from birth to death,  
2 comprising:

3 associating a unique identifier with a transfer of animals from an original owner thereof;

4 associating a different unique identifier with each subsequent transfer of the animals or any  
5 subset thereof; and

6 linking, at each subsequent transfer, the different unique identifier with the unique  
7 identifier associated with a most-recent previous transfer of the animals in that subsequent  
8 transfer.

1 Claim 19: The method according to Claim 18, wherein additional animals are included in one or  
2 more of the subsequent transfers, and wherein the unique identifier of the most-recent previous  
3 transfers of those additional animals is also linked with the different unique identifier of the  
4 subsequent transfer.

Claim 20 (canceled)

1 Claim 21: A method of providing country of origin claims, the method comprising:  
2 completing, for each of a plurality of transfers of one or more animals from transferors to  
3 transferees, a passport document to represent the transfer, wherein each of the passport  
4 documents has associated therewith a unique passport identifier, thereby providing a unique  
5 identifier for the transfer, further comprising:  
6 specifying, on the passport document, a count of the animals transferred,  
7 descriptive information for the animals transferred, and a location of the transfer;  
8 specifying, on the passport document, the unique passport identifier associated  
9 with any previous passport document completed to represent a previous transfer of the animals  
10 transferred; and  
11 signing the passport document, by the transferor and the transferee, thereby  
12 certifying the transfer;  
13 recording each of the transfers in a repository maintained by a third party who is distinct  
14 from the transferors and the transferees, further comprising:

15                   creating an entry in the repository for each of the transfers, each of the entries  
16   comprising the unique passport identifier associated with the passport document representing that  
17   transfer, the count of the animals transferred, the descriptive information for the animals  
18   transferred, the location of the transfer, and the unique passport identifier associated with any  
19   previous passport document completed to represent a previous transfer of the animals transferred;  
20   and

21                   using the entries in the repository to determine, for a selected one of the animals, whether  
22   a country of origin claim can be made stating that the selected one was always physically located,  
23   from its birth to its death, in a particular country by comparing, in each of the entries that pertains  
24   to transferring the selected animal, the location to the particular country.

## **EVIDENCE APPENDIX**

Neither Appellant nor the Appellant's legal representative have any personal knowledge of evidence requiring separate identification herein as bearing on this Appeal.

## **RELATED PROCEEDINGS APPENDIX**

No related proceedings are personally known to Appellant or the Appellant's legal representative.